

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DENNIS ALSIP §
§
V. § CIVIL ACTION NO. G-13-068
§
STATE FARM MUTUAL INSURANCE §
COMPANY OF TEXAS §

REPORT AND RECOMMENDATION

Before the Court is the “Motion to Dismiss without Prejudice” of Plaintiff, Dennis Alsip; in the Motion, Alsip alleges that “he no longer wishes to prosecute his current claims and causes of action against Defendant” State Farm Mutual Insurance Company of Texas (State Farm). At the time the Motion was filed, State Farm had previously filed a Motion for Summary Judgment asserting that Alsip’s claims were time-barred. In lieu of filing a response to the Motion for Summary Judgment, Alsip filed the instant Motion to Dismiss. State Farm is opposed to the Motion unless the dismissal is with prejudice. Having reviewed the file and heard arguments of counsel in a hearing, by telephone, the Court now issues this Report and Recommendation.

This case involves a claim for insurance benefits for property damage to Alsip’s home caused by Hurricane Ike on September 13, 2008. Since the limitations period will be unaffected by the pendency of the instant action, Utica Insurance Co. v. Pruitt & Cowden, 902 S.W.2d 143, 147 (Tex. App. -- Houston [1st Dist] 1995) (“When a case is dismissed for want of prosecution, it is as if the case had never been filed for limitations purposes.”), it appears that

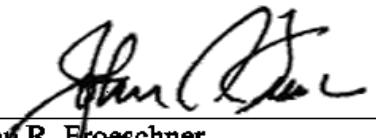
any refiling of this action would be time-barred by both the two-year and the four-year statutes of limitation. Consequently, any dismissal will, in effect, be with prejudice. As a result, the Court sees no need to prolong this dispute.

It is, therefore, the **RECOMMENDATION** of this Court that the Plaintiff's "Motion to Dismiss without Prejudice" (Instrument no. 10) be **GRANTED** and that the Original Petition of Plaintiff, Dennis Alsip, be **DISMISSED** without prejudice.

Under the circumstances, the Court **WILL** accelerate the due date for objections to this Report and Recommendation. See McGill v. Goff, 17 F.3d 729, 731-32 (5th Cir. 1994)

The Clerk **SHALL** send a copy of this Report and Recommendation to the Parties who **SHALL** have until **Monday, July 15, 2013**, to have written objections, filed pursuant to 28 U.S.C. §636(b)(1)(C), **physically on file** in the Office of the Clerk. The Objections **SHALL** be electronically filed and/or mailed to the Clerk's Office at P.O. Drawer 2300, Galveston, Texas 77553. Failure to file written objections within the prescribed time **SHALL** bar any Party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

DONE at Galveston, Texas, this 9th day of July, 2013.



John R. Froeschner
United States Magistrate Judge